



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:17.01.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P. (MD)No.720 of 2018

Murugan

... Petitioner / Accused

-Vs-

The Sub-Inspector of Police,
Town Police Station,
Srivilliputhur
Viruthunagar District.

... Respondent/Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to call for the records in Cr.M.P.No.2172 of 2017, dated 25.09.2017 in C.C.No.224 of 2011 pending on the file of the learned Judicial Magistrate No.II, Srivilliputhur and set aside the same and consequently direct the learned Judicial Magistrate No.II, Srivilliputhur to recall P.Ws.1 to 9 and give an opportunity to the petitioner to cross examine them.

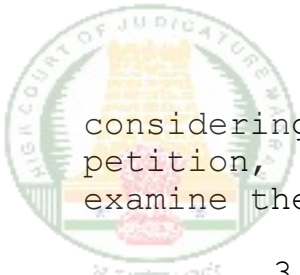
For petitioner : Mr.A.Balaji

For Respondent : Mr.Prabhu Ramachandran
Government Advocate (Crl. Side)

O R D E R

This Criminal Original petition has been filed by the accused to set aside the order passed by the learned Judicial Magistrate No.II, Srivilliputhur in Cr.M.P.No.2172 of 2017, dated 25.09.2017 in C.C.No.224 of 2011.

2. The learned counsel appearing for the petitioner has submitted that the petitioner is facing trial in C.C.No.224 of 2011. He further submitted that P.Ws.1 to 9 were not cross examined, when they were examined in chief, as his counsel was not available on that day. He further submitted that now the case is posted for evidence on the side of the accused and at that stage only, the petitioner realized that cross examination of the aforesaid witnesses is must and hence, he has filed a petition under Section 311 Cr.P.C in Cr.M.P.No.2172 of 2017 on 28.03.2017 to recall the aforesaid witnesses for the purpose of cross-examination. He further submitted that the learned Judicial Magistrate, without



considering the request made by the petitioner, has dismissed the petition, without giving opportunity to the petitioner to cross examine the aforesaid material witnesses.

3. The learned Government Advocate (Crl.side) has opposed this petition on the ground that even though P.W.1 was examined on 26.09.2013, P.W.2 was examined on 09.01.2013, P.Ws.3 and 4 were examined on 03.12.2013, P.W.5 was examined on 25.06.2014, P.W.6 was examined on 06.11.2014, P.W.7 was examined on 12.06.2015, P.W.8 was examined on 15.09.2015 and P.W.9 was examined on 07.11.2016, the petitioner has not taken any steps to recall the aforesaid witnesses within the reasonable time and with a view to drag on the proceedings, he has filed a petition to recall the aforesaid witnesses belatedly, after four years.

4.A perusal of the order passed by the learned Judicial Magistrate shows that P.Ws.1 to 9 were examined in chief on 26.09.2013, 09.01.2013, 03.12.2013, 25.06.2014, 06.11.2014, 12.06.2015, 15.09.2015 and on 07.11.2016. After 4 years, the petitioner has filed the petition to recall the aforesaid witnesses. The reason stated by the learned counsel for the petitioner is that since his counsel was not available on the particular dates, the aforesaid witnesses were not cross examined on the very same date. Even if the said contention is accepted for argument sake, the petitioner has not stated any reason for not filing petition to recall the aforesaid witnesses within the reasonable time. However, in order to give an opportunity to the petitioner, to cross examine the aforesaid witnesses, I am inclined to allow the present petition by imposing condition.

5.In the result, this Criminal Original Petition will be allowed on a condition that the petitioner shall pay a sum of Rs.6,000/- (Rupees six thousand only) to the credit of the Honourable Chief Justice Relief Fund on or before 07.02.2018 and the order passed in Cr.M.P.No.2172 of 2017 dated 25.09.2017 in C.C.No.224 of 2011 by the learned Judicial Magistrate No.II, Srivilliputhur will be set aside and the petition in Cr.M.P.No.2172 of 2017 dated 25.09.2017 in C.C.No.224 of 2011 by the learned Judicial Magistrate No.II, Srivilliputhur shall stand allowed. In case, the petitioner failed to comply with the aforesaid condition, this Criminal Original Petition shall stand dismissed automatically without further reference to the Court.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

<https://hcservices.ecourts.gov.in/hcservices/>

1.The Judicial Magistrate No.II, Srivilliputhur.



2. The Sub-Inspector of Police,
Town Police Station,
Srivilliputhur
Viruthunagar District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4. The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.BALAJI Advocate in SR.NO.42484

VS

MV:GT:SAR3:30/01/2018/3P/6C

CRL.O.P. (MD) No.720 of 2018

17.01.2018